

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred House Bill No. 1514, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 4, line 28, delete "," and insert "**and subsection (d),**".
- 2 Page 5, delete lines 26 through 36.
- 3 Page 5, line 37, delete "(g)" and insert "(f)".
- 4 Page 5, line 37, delete "not a part of" and insert "**confidential**".
- 5 Page 5, line 38, delete "public records of the state examiner".
- 6 Page 5, line 39, delete "." and insert ", **unless the attorney general**
- 7 **institutes an action under subsection (e) on the basis of the**
- 8 **preliminary report.**".
- 9 Page 5, after line 39, begin a new paragraph and insert:
- 10 "SECTION 3. IC 5-11-6-1 IS AMENDED TO READ AS
- 11 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) The state
- 12 examiner, personally or through the deputy examiners, field examiners,
- 13 or private examiners, upon the petition of twenty-five (25) interested
- 14 taxpayers showing that effective local relief has not and cannot be
- 15 obtained after due effort, shall make the inquiries, tests, examinations,
- 16 and investigations that may be necessary to determine whether:
- 17 (1) any public contract has been regularly and lawfully executed
- 18 and performed; or
- 19 (2) any public work, building, or structure has been or is being
- 20 performed, built, or constructed in accordance with the terms and
- 21 provisions of the contract, and in compliance with the plans and

1 specifications, if any.

2 Upon a written petition of twenty-five (25) taxpayers the state examiner
3 may also require all plans, specifications, and estimates to be submitted
4 to the state examiner for corrections and approval before a contract is
5 awarded.

6 (b) The state examiner, deputy examiner, and any field examiner,
7 when engaged in making an inquiry, test, examination, or investigation
8 under subsection (a), is entitled to examine and inspect any public
9 records, documents, data, contracts, plans, and specifications contained
10 or found in any public office or other place pertaining or relating to the
11 public contract or public work, building, or structure. In addition,
12 subpoenas may be issued to witnesses to appear before the examiner in
13 person or to produce books and papers for inspection and examination.
14 The state examiner, deputy, field, and private examiner may administer
15 oaths and examine witnesses under oath either orally or by
16 interrogatories on all matters under examination and investigation.
17 Under order of the state examiner, the examination may be transcribed,
18 with the reasonable expense paid by the municipality in the same
19 manner as the compensation of the field examiner is paid.

20 (c) The state examiner, the deputy examiner, and a field examiner
21 may enforce attendance and answers to questions and interrogatories,
22 as provided by law, with respect to examinations and investigations
23 made by the state examiner, deputy examiner, field examiner, or
24 private examiner of public offices.

25 (d) The state examiner, deputy examiner, any field examiner, and
26 any private examiner, when making an examination or investigation
27 under subsection (a), shall examine, inspect, and test the public works,
28 buildings, or structures in the manner that the examiner sees fit to
29 determine whether it is being performed, built, or constructed
30 according to the contract and plans and specifications.

31 (e) The state examiner shall file a report covering any examination
32 or investigation that discloses:

33 (1) fraud, collusion, misconduct, or negligence in the letting or
34 the execution of any public contract or in the performance of any
35 of the terms and conditions of any public contract; or

36 (2) any failure to comply with the terms or conditions of any
37 public contract in the construction of any public work, building,
38 or structure or to perform, build, or construct it according to the
39 plans and specifications, if any, provided in the contract;

40 that causes loss, injury, waste, or damage to the state, the municipality,
41 taxing or assessment district, other public entity, or to its citizens, if it
42 is enforceable by assessment or taxation.

(f) The report must ~~be~~ **meet the following requirements:**

(1) **The report must be** made, signed, and verified in quadruplicate by the examiner making the examination. ~~and~~

(2) **The report may be** filed promptly with the state examiner **at the time the matter is discovered and before the audit is concluded, subject to subsection (j).**

After inspection of the report, the state examiner shall file a copy of the report **promptly** with the attorney general.

(g) The attorney general shall diligently institute and prosecute civil proceedings against any or all officers, individuals, and persons in the form and manner that the attorney general determines will secure a proper recovery to the state, municipality, taxing or assessment district, or other public entity injured, defrauded, or damaged by the matters in the report. These prosecutions may be made by the attorney general and the recovery may be had, either upon public official bonds, contractors' bonds, surety or other bonds, or upon individual liability, either upon contract or in tort, as the attorney general determines is wise. No action or recovery in any form or manner, or against any party or parties, precludes further or additional action or recovery in any other form or manner or against another party, either concurrently with or later found necessary, to secure complete recovery and restitution with respect to all matters exhibited, set out, or described in the report. The suits may be brought in the name of the state on the relation of the attorney general for the benefit of the state, or the municipality, taxing or assessment district, or other public entity that may be proper. The actions brought against any defendants may be joined, as to parties, form, and causes of action, in the manner that the attorney general decides.

(h) Any report described in this section or a copy duly certified by the state examiner shall be taken and received in any and all courts of this state as prima facie evidence of the facts stated and contained in the reports.

(i) If an examination, investigation, or test is made without a petition being first filed and the examination, investigation, or test shows that the terms of the contract are being complied with, then the expense of the examination, investigation, or test shall be paid by the state upon vouchers approved by the state examiner from funds available for contractual service of the state board of accounts. If such a report shows misfeasance, malfeasance, or nonfeasance in public office or shows that the terms of the plans and specifications under which a contract has been awarded are not being complied with, it is unlawful to make the report public until the report has been certified to the

1 attorney general.

2 (j) If, during an examination under this article, a deputy
3 examiner, field examiner, or private examiner acting as an agent
4 of the state examiner determines that all of the following conditions
5 are satisfied, the examiner shall report the determination to the
6 state examiner:

7 (1) A substantial amount of public funds has been
8 misappropriated or diverted or is unaccounted for.

9 (2) There is a reasonable likelihood that the final report under
10 subsection (e) or (f) will include a finding that a public
11 contract has not been regularly and lawfully executed and
12 performed or that a public work, building, or structure has
13 not been or is not being performed, built, or constructed in
14 accordance with the terms and provisions of the contract, and
15 in compliance with the plans and specifications, if any.

16 (3) The malfeasance, misfeasance, or nonfeasance that
17 resulted in the misappropriation of, diversion of, or inability
18 to account for the public funds was committed by the officer
19 or employee who is primarily responsible for ensuring
20 compliance with the terms of the public contract and laws
21 regarding maintaining and accounting for the funds received
22 in connection with a public contract.

23 (k) After receiving a preliminary report under subsection (j),
24 the state examiner shall provide a copy of the report to the
25 attorney general. The attorney general shall diligently institute and
26 prosecute civil proceedings against the delinquent officer or
27 employee, or upon the officer's or employee's official bond, or both,
28 and against any other proper person that will secure to the state or
29 to the proper municipality the recovery of any funds
30 misappropriated, diverted, or unaccounted for.

31 (l) In an action under subsection (k), the attorney general may
32 attach the defendant's property under IC 34-25-2.

33 (m) A preliminary report under subsection (j) is confidential
34 until the final report under subsection (e) is issued, unless the
35 attorney general institutes an action under subsection (k) on the
36 basis of the preliminary report.

37 SECTION 4. IC 34-25-2-1 IS AMENDED TO READ AS
38 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) At or after the
39 time of filing a complaint, the plaintiff may have an attachment against
40 the property of the defendant, in the cases described in subsection (b)
41 and in the manner described in this chapter.

42 (b) The plaintiff may attach property when the action is for the

1 recovery of money and the defendant:

2 (1) is, or one (1) of several defendants is, a foreign corporation or
3 a nonresident of Indiana;

4 (2) is, or one (1) of several defendants is, secretly leaving or has
5 left Indiana with intent to defraud:

6 (A) the defendant's creditors;

7 (B) the state;

8 (C) a municipal corporation;

9 (D) a political subdivision; or

10 (E) a school corporation (as defined in IC 20-18-2-16(c));

11 (3) is concealed so that a summons cannot be served upon the
12 defendant;

13 (4) is removing or about to remove the defendant's property
14 subject to execution, or a material part of the property, outside
15 Indiana, not leaving enough behind to satisfy the plaintiff's claim;

16 (5) has sold, conveyed, or otherwise disposed of the defendant's
17 property subject to execution, or permitted the property to be sold
18 with the fraudulent intent to cheat, hinder, or delay:

19 (A) the defendant's creditors;

20 (B) the state;

21 (C) a municipal corporation;

22 (D) a political subdivision; or

23 (E) a school corporation (as defined in IC 20-18-2-16(c));

24 or

25 (6) is about to sell, convey, or otherwise dispose of the defendant's
26 property subject to execution with the fraudulent intent to cheat,
27 hinder, or delay:

28 (A) the defendant's creditors;

29 (B) the state;

30 (C) a municipal corporation;

31 (D) a political subdivision; or

32 (E) a school corporation (as defined in IC 20-18-2-16(c)).

33 (c) The plaintiff is entitled to an attachment for the causes
34 mentioned in subsection (b)(2), (b)(4), (b)(5), and (b)(6) whether the
35 cause of action is due or not.

36 SECTION 5. IC 34-25-2-5 IS AMENDED TO READ AS
37 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. **Except for actions**
38 **filed by the attorney general under IC 5-11-5-1 or IC 5-11-6-1**, the
39 plaintiff or a person representing the plaintiff shall execute a written
40 undertaking, with sufficient surety, to be approved by the clerk, payable
41 to the defendant, to the effect that the plaintiff will:

42 (1) duly prosecute the proceeding in attachment; and

- 1 (2) pay all damages that may be sustained by the defendant if the
2 proceedings of the plaintiff are wrongful and oppressive."
 (Reference is to HB 1514 as printed February 20, 2009.)

and when so amended that said bill do pass .

Committee Vote: Yeas 7, Nays 0.

Senator Steele, Chairperson